

EPA'S OZONE DEPLETING SUBSTANCE (ODS) WARNING LABEL

Introduction

Section 611 of Title VI of the Clean Air Act, as amended in 1990, requires "labeling of products that contain or were manufactured with class I or II [ozone depleting] substances" by May 15, 1993. Class I substances are chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and 1,1,1-trichloroethane (methyl chloroform), while class II substances are hydrochlorofluoro-carbons (HCFCs). The text of the label reads: "WARNING: Contains (or "Manufactured with" if applicable) [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

Recent Developments

In an amendment promulgated on January 19, 1995, EPA added several exemptions in response to comments that the former rule placed burdens "on specific parties whose activities contribute no additional emissions of ozone-depleting substances." Examples include exemptions from the labeling requirement "when controlled substances are destroyed,... [and] for spare parts that are used in repair." The amendment also made some minor clarifying revisions on such issues as the labeling of waste. These changes were intended to "provide additional flexibility to the regulated community [while] in no way [compromising] the environmental goals and benefits of protecting public health through the labeling regulation" (60 FR 4010).

Program Summary

In 1977, "the Food and Drug Administration and the Consumer Product Safety Commission required marketers and importers of self-pressurized medical and consumer products that use a CFC propellant to label their products with a warning that such products may harm public health and the environment by reducing ozone in the upper atmosphere."⁶ Soon afterward, CFC was banned as an aerosol propellant for all but "essential applications," thus making the FDA/CPSC warning label irrelevant on such consumer products.

The final rule implementing section 611 was promulgated by EPA on February 11, 1993. The rule prohibits the sale of "any container containing class I and class II substances, product containing class I substances and product manufactured with class I substances, unless it bears a warning statement indicating that the product contains or is manufactured with ozone-depleting substances." Before January 1, 2015, products containing or manufactured with class II substances may require labeling should "the Administrator [determine] that safe alternatives are available." After January 1, 2015, all products containing or manufactured with class I or II substances must be labeled (58 FR 8136).

⁶See the *Federal Register* April 29, 1977, 42 FR 22018, and August 24, 1977, 42 FR 42780.

"Products manufactured with class I substances can be temporarily exempted from the labeling requirements if EPA determines that there are no substitute products or manufacturing processes that (a) do not rely on the use of the class I substance, (b) reduce the overall risk to human health and the environment, and (c) are currently or potentially unavailable. All products must be labeled by 2015" (Labeling Subcommittee, "Meeting Summary").

"Products manufactured with" class I substances might include electronic parts washed in class I solvents or packaging, books, or sporting goods that use class I adhesives. A container of class I substances might be a can of CFC-12 intended for use in degreasing units or refrigeration equipment. Such refrigeration or degreasing units would then be considered "products containing class I substances."

Although a symbol featuring a globe within an octagon (a stop sign) was considered in the rule proposal, the final rule requires only the text of the warning above. EPA believed that "this symbol would substantially increase consumer understanding and recognition of the required warning and thus heighten the effectiveness of the label" (57 FR 1992). The agency was also concerned, however, that the cost of changing product labels "would outweigh the benefits of using the label" (58 FR 8136).

Section 611 also required that the warning be "clearly legible and conspicuous;" EPA proposed that it should appear on the "principle display panel," defined as the place on a product or package "where the consumer is likely to look for product information." After receiving comments on the proposal, EPA decided that, "In view of the broad diversity of products potentially affected by the labeling requirements...manufacturers will need some latitude as to where to place the labels" (58 FR 8136). Therefore, the final regulation reverts to the language of the Clean Air Act requiring the warning to be "clearly legible and conspicuous" wherever it is presented. Other labeling options such as hang tags, stickers, and supplemental printed materials are also acceptable.

At the time of the Clean Air Act Amendments in 1990, the US was committed to a phaseout of class I substances by the year 2000 (two years later for methyl chloroform), in accordance with the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. In a November 1992 meeting in Copenhagen, the phaseout schedule for class I substances was accelerated to January 1996 (two years *sooner* for halons). Thus, the ODS warning label was in effect for fewer than three years before the class I phaseout was completed. The 1993 rule states, "The recent decision of the Protocol Parties to significantly accelerate the phaseout of the listed ozone-depleting substances reduces the importance of the labeling program....[When the phaseout was scheduled for the year 2000], the labeling requirements provided an incentive for manufacturers to move away from their use of such substances before 2000 in order to avoid any negative marketplace reaction. With the acceleration of the phaseout,...requiring products to be labeled is unlikely to significantly add to the manufacturers' incentive to switch to alternative substances." As a result, EPA streamlined the labeling requirements by rejecting a proposed pass-through requirement whereby any manufacturer that incorporates a labeled component into its product would be required to label its product. Instead, EPA defined "manufactured with," such that manufacturers

must label products only when "the manufacturer of the product itself used an ozone-depleting substance in manufacturing that product....The incorporation of that [labeled] product into another, however, [would] not necessitate a label" (58 FR 8136).

References

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